

L5EKNAVC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 CR 160 (MKV)
Remote Conference

5 JORGE NAVARRO, ERICA GARCIA,
6 MARCOS ZULUETA, MICHAEL
7 TANNUZZO, SETH FISHMAN, LISA
8 GIANNELLI, JORDAN FISHMAN,
9 RICK DANE, MICHAEL KEGLEY,
10 JR., ALEXANDER CHAN, REBECCA
11 LINKE,

Defendants.

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11 New York, N.Y.
12 May 14, 2021
13 11:10 a.m.

Before:

14 HON. MARY KAY VYSKOCIL,

15 District Judge

16 APPEARANCES

17 AUDREY STRAUSS,
18 United States Attorney for the
19 Southern District of New York
20 ANDREW C. ADAMS
21 SARAH MORTAZAVI
22 Assistant United States Attorneys

23 JASON W. KREISS
24 Attorney for Defendant Navarro

25 DEBORAH AUSTERN COLSON
Attorney for Defendant Garcia

ROBERT E. GOLDMAN
Attorney for Defendant Zulueta

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APPEARANCES (Continued)

DONALD T. ROLLOCK

Attorney for Defendant Tannuzzo

ANDREW SIMMONS FELDMAN

Attorney for Defendant S. Fishman

LOUIS V. FASULO

ALEX STEPHEN HUOT

Attorneys for Defendant Giannelli

PATRICK JAMES JOYCE

Attorney for Defendant J. Fishman

CALVIN HAROLD SCHOLAR

Attorney for Defendant Dane

PAGE ANTHONY PATE

Attorney for Defendant Oakes

RITA GLAVIN

MICHAEL G. CONSIDINE

Attorneys for Defendant Servis

STEPHEN P. SCARING

Attorney for Defendant Rhein

MICHAEL ROMANO MAZZOLI

Attorney for Defendant Kegley

DAVID PATTON

FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant Chan

BY: ROBERT M. BAUM

DAVID WIKSTROM

Attorney for Defendant Linke

ALSO PRESENT:

EMMA GREENWOOD, Coordinating Discovery Attorney

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(The Court and all parties appearing telephonically)

(Case called)

THE DEPUTY CLERK: Counsel starting with the government, state your appearances, please.

MR. ADAMS: Good morning, your Honor. You have Andrew Adams and Sarah Mortazavi.

THE COURT: Sorry, Mr. Adams, I'm having a hard time hearing you.

MR. ADAMS: I'll speak up, your Honor. You have myself and Sarah Mortazavi for the government. Good morning.

THE COURT: All right. Thank you, sir. Good morning.

THE DEPUTY CLERK: I'm going to go down the list and, by defendant, if counsel will state your appearance and then please let us know if your client is on the line as well.

Jorge Navarro?

MR. KREISS: Good morning, your Honor. Jason Kreiss on behalf of Jorge Navarro. Mr. Navarro is not on the line, and I had sent in a letter seeking his excusal from the hearing, on May 12th.

THE COURT: All right. Good morning, Mr. Kreiss. Thank you.

THE DEPUTY CLERK: Erica Garcia.

MS. COLSON: Good morning, your Honor. Deborah Colson on behalf of Erica Garcia, and she is not present for this conference and has waived her appearance.

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1 THE COURT: All right. Good morning, Ms. Colson.
2 Thank you.

3 THE DEPUTY CLERK: Marcos Zulueta.

4 MR. GOLDMAN: Robert Goldman for Mr. Zulueta, who has
5 waived his presence.

6 THE COURT: All right. Thank you. And good morning,
7 Mr. Goldman.

8 Could I just ask that all parties who are not speaking
9 to mute their line because there's a tremendous amount of
10 feedback. And if you are not participating in this hearing but
11 are simply monitoring it, it would greatly facilitate both my
12 ability and everybody's ability to hear one another, and the
13 ability of our court reporter to get an accurate transcript, if
14 you would please all mute your lines.

15 I'm sorry, Ms. Dempsey.

16 THE DEPUTY CLERK: Thank you, your Honor.

17 Michael Tannuzzo.

18 MR. ROLLOCK: Good morning, your Honor. Donald
19 Rollock, appearing on behalf of Mike Tannuzzo, and I did waive
20 my client's appearance for this application.

21 THE COURT: All right. Thank you, Mr. Rollock.

22 THE DEPUTY CLERK: Seth Fishman.

23 MR. FELDMAN: Good morning, your Honor. Andrew
24 Feldman on behalf of Dr. Seth Fishman. Dr. Seth Fishman is
25 present for this hearing and is listening in.

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1 THE COURT: All right. Thank you, Mr. Feldman. Good
2 morning.

3 THE DEPUTY CLERK: Lisa Giannelli.

4 MR. FASULO: Good morning, Judge. It's Louis Fasulo
5 for Lisa Giannelli. Ms. Giannelli is on the line this morning
6 and is present. I think Alex Huot is also present from my
7 office.

8 THE COURT: I'm sorry, the other gentleman's name?

9 MR. FASULO: Alex Huot.

10 MR. HUOT: Yes, I'm also on the line.

11 THE COURT: All right. Good morning, Mr. Fasulo and
12 Mr. Huot. And good morning, Ms. Giannelli.

13 I neglected to say good morning to Dr. Fishman as
14 well, so good morning.

15 THE DEPUTY CLERK: Jordan Fishman.

16 MR. JOYCE: Good morning, your Honor. Patrick Joyce
17 on behalf of Mr. Fishman. Mr. Fishman is appearing
18 telephonically. We did file a request that he be able -- or a
19 waiver of his in-person appearance.

20 THE COURT: And do you have a Mr. Moore with you?

21 MR. JOYCE: Mr. Moore is not present. He's on the
22 case but he's not present.

23 THE COURT: All right. So good morning, Mr. Joyce and
24 Mr. Fishman.

25 MR. J. FISHMAN: Good morning, your Honor.

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1 THE DEPUTY CLERK: Rick Dane.

2 MR. SCHOLAR: Good morning, your Honor. This is
3 Calvin Scholar for Mr. Dane. I believe Mr. Dane is also on the
4 line. I'm having some problems having my computer connect to
5 the camera, so I apologize for not being visible.

6 THE COURT: All right. Good morning, Mr. Scholar, and
7 good morning, Mr. Dane.

8 MR. DANE: Good morning, your Honor.

9 THE DEPUTY CLERK: Christopher Oakes.

10 MR. PATE: Good morning, Judge. Page Pate on behalf
11 of Mr. Oakes. He is not on the call with us today.

12 THE COURT: Good morning, Mr. Pate.

13 THE DEPUTY CLERK: Jason Servis.

14 MS. GLAVIN: Good morning, your Honor. Rita Glavin,
15 along with Michael Considine, for Mr. Servis, who is not
16 present with us on the conference and waives his appearance.

17 THE COURT: All right. Good morning, Ms. Glavin. I
18 was not expecting to see you; I thought you were otherwise
19 engaged on trial, but good morning to you.

20 MS. GLAVIN: We're off today.

21 THE COURT: All right. Good morning, and good morning
22 to Mr. Considine as well.

23 MR. CONSIDINE: Good morning, your Honor.

24 THE DEPUTY CLERK: Kristian Rhein.

25 MR. SCARING: Good morning, your Honor. Stephen

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1 Scaring for Kristian Rhein. His appearance has been waived.

2 THE COURT: Good morning, Mr. Scaring. And do you
3 have a colleague on the line with you?

4 MR. SCARING: No, I don't. Thank you.

5 THE COURT: You're welcome.

6 THE DEPUTY CLERK: Michael Kegley.

7 MR. MAZZOLI: Your Honor, Mike Mazzoli for Mr. Kegley,
8 and he is also on the line.

9 THE COURT: Good morning, Mr. Mazzoli and Mr. Kegley.

10 THE DEPUTY CLERK: Alexander Chan.

11 MR. BAUM: Good morning, your Honor. Robert Baum on
12 behalf of Dr. Chan. He is not on the line today.

13 THE COURT: Good morning, Mr. Baum.

14 THE DEPUTY CLERK: And Rebecca Linke?

15 THE COURT: Counsel for Ms. Linke.

16 THE DEPUTY CLERK: Mr. Wikstrom?

17 MR. WIKSTROM: I apologize, your Honor, I muted
18 myself. This is David Wikstrom, and Dr. Linke is present as
19 well.

20 THE COURT: All right. Thank you. Good morning,
21 Mr. Wikstrom, and good morning, Dr. Linke.

22 Any other appearances?

23 MS. GREENWOOD: Yes, your Honor. Emma Greenwood, the
24 coordinating discovery attorney, is here.

25 THE COURT: Thank you, Ms. Greenwood, very much.

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1 Anyone else?

2 All right. So, needless to say, we are conducting
3 today's proceeding remotely because of restrictions that remain
4 in place as a result of COVID-19. I did receive a written
5 request from the parties to conduct today's hearing remotely
6 rather than in person at the courthouse, and so I am honoring
7 that request.

8 We are here for a status conference in this case,
9 which was scheduled when we were last together, back in
10 November. I would note for the record that under Rule 43(b),
11 the presence of the defendant is not required at a conference
12 in a case. There are numerous cases holding that defendants do
13 not need to attend conferences, so, notwithstanding that, I
14 have received, as some of the counsel have noted when we were
15 taking appearances, I have received written waivers of presence
16 and consents to proceed by videoconference from most, if not
17 all, of the parties.

18 I would just like to give you a few reminders before
19 we get going.

20 Because we're proceeding remotely, as I said at the
21 outset, please mute your lines if you're not addressing the
22 Court. The sound has gotten much better but I was getting a
23 great deal of feedback.

24 We do have a court reporter on the line with us.
25 Mr. Walker, are you able to hear me and all of the parties

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1 clearly?

2 (Pause)

3 THE COURT: All right. Thank you, Mr. Walker.

4 So when you do speak, please identify yourself for the
5 record so that I know who's speaking, so that your video pops
6 up and I can see who it is that I'm speaking with, and, most
7 importantly, so that Mr. Walker can get an accurate record of
8 what transpires today.

9 I would just remind everyone, this is a formal court
10 proceeding, as if you were all in open court, and you are
11 strictly prohibited from recording or rebroadcasting any
12 portion of today's proceeding.

13 So, as I said, several defendants have submitted
14 waivers of presence. I have received requests or waivers from
15 the following defendants: Alexander Chan – and I would just
16 ask counsel to please listen and correct me if I forget someone
17 or if what I recite is inaccurate – Alexander Chan filed a
18 waiver at ECF No. 64, Kristian Rhein filed at ECF 365, Erica
19 Garcia filed at 366 – someone needs to mute their line, please
20 – Michael Tannuzzo filed a waiver at 367, Marcos Zulueta at
21 369, Jorge Navarro at ECF 370, and Jason Servis at ECF 371.

22 Are there any additional requests for waiver of
23 appearance?

24 All right. As I noted, defendants' appearance is not
25 required, but having said that, I will endorse or grant each of

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1 these requests by the defendants for waiver of their appearance
2 at today's conference.

3 I've also received written confirmations from the
4 following defendants to proceeding remotely by videoconference
5 today: Jordan Fishman at ECF 359 -- is that accurate, counsel?

6 MR. JOYCE: Yes, your Honor.

7 THE COURT: All right. I would note that what was
8 filed on the docket is not signed by the defendant. I believe
9 you told me Mr. Fishman is on the line, correct?

10 MR. JOYCE: He is, your Honor. And under his
11 signature there is a parentheses that says the Court would
12 inquire and sign on his behalf.

13 THE COURT: Yes, so that's what I intend to do.

14 Mr. Fishman, do you in fact consent to proceeding
15 today by videoconference rather than appearing before me in
16 open court.

17 MR. J. FISHMAN: Yes, I do. Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 I have a consent from the following defendants as
20 well: Michael Kegley at 360, Jason Servis at 361, Rick Dane at
21 ECF 362, Dr. Linke at ECF 363, Marcus Zulueta at 369, Dr. Seth
22 Fishman at 373.

23 I then have two consents that were not filed on the
24 docket from Lisa Giannelli and Kristian Rhein. I would ask
25 counsel for those defendants to please file those consents on

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1 the docket in the case.

2 Am I missing any other defendants who have filed a
3 written consent to proceed by videoconference?

4 All right. I have not done a check that I have
5 something from every defendant, so I will give a final
6 opportunity for anyone who wishes to object to proceeding by
7 videoconference, to do so now.

8 All right. Hearing none, we will proceed with this
9 conference by video.

10 Now, as I said, at the last conference, it was agreed
11 that discovery would be ongoing and that we would reconvene
12 today for a further status conference, at which we would talk
13 about things like trial scheduling. In the interim, three
14 defendants filed motions to dismiss, on which the Court was
15 diligently at work and close to issuing a ruling. Then, more
16 than 14 months into this case, and after defendants had filed,
17 as I say, hundreds of pages in support of their motion to
18 dismiss the criminal indictment against them, motions which
19 were fully briefed in April and on which the Court has been
20 diligently working since that time, last week, defendants filed
21 a letter advising the Court that they were, quote, considering
22 moving to recuse me from presiding over this case.

23 Yesterday afternoon, after consultation with, and over
24 objection by, the government, defendants filed a letter asking
25 me to recuse myself from this case, over which I have presided

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1 fairly for more than a year and a half. All of the information
2 upon which defendants rely has been publicly available since
3 the case was assigned to me. This meritless motion appears to
4 be calculated to divert attention from the serious crimes with
5 which the defendants have been accused, and to obstruct and
6 delay the orderly administration of the case.

7 The motion is denied as frivolous, an obvious tactical
8 gambit to delay the determination of defendants' motion to
9 dismiss.

10 No reasonable person would, or could, believe that I
11 cannot preside fairly and impartially over this case based upon
12 my ownership, my past ownership, of incidental fractional,
13 financially negligible, interest in two horses whose offspring
14 – offspring which I did not own – apparently ran in four races
15 against horses trained by Defendants Servis or Navarro some 15
16 years ago, which is a decade or more before the alleged
17 conspiracy involving Messrs. Servis or Navarro is alleged to
18 have begun.

19 The opposition, filed late last night by the
20 government, puts the lie to confected charges by defendant that
21 I had a potential financial interest in the outcome of four
22 races that took place in 2006, 2007, 2008, and 2009, in which
23 Defendants Servis- and Navarro-trained horses supposedly ran.

24 First, defendants argue that I should recuse myself
25 because I was a breeder of horses that raced against horses

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1 trained by Navarro or Servis, as I say, in four races from 2006
2 to 2009. Defendants' motion initially states that I, quote,
3 bred these horses, but then it misleadingly characterizes them
4 as, quote, my horses. Defense counsel and their clients well
5 know, or they should, that breeding horses and owning horses is
6 not the same thing. I held a fractional interest in two horses
7 whose offspring, which I did not own, then raced, apparently on
8 four occasions – one horse raced three times, the other horse
9 raced once – against horses trained by either Mr. Navarro or
10 Mr. Servis.

11 As defendants surely must know, based on their
12 experience in the industry, my fractional interest in these
13 horses, which, at best, would have provided inconsequential
14 income to me in the form of breeders' awards, if the horses had
15 run in New York, which they apparently did not, these
16 fractional, negligible potential interests from nearly 13 to 15
17 years ago are precisely the remote interests that the Second
18 Circuit has stated clearly is not sufficient grounds for
19 recusal, and I would refer you to the *Drexel Burnham* case.

20 Defendants also suggest that somehow I could be a,
21 quote, victim of the wrongdoing alleged in the indictment. But
22 as defendants readily admit, the indictment does not allege any
23 criminal wrongdoing by Mr. Navarro or Mr. Servis before 2016,
24 which is long after the races to which they attach significance
25 in their motions.

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1 Now, unless counsel wishes to make an admission that
2 your clients were doping horses ten years before the conspiracy
3 alleged in the indictment, the races referred to in the
4 intentionally misleading letter submitted in support of the
5 recusal motion have nothing to do with this case. There is no
6 conflict here, and no reasonable person would perceive one.

7 Anyone who thinks this is a serious motion should
8 consider that one of the alleged bases for the recusal motion
9 is that one of my more than 150 or so former partners at my
10 former law firm, from which I retired in 2016, did pro bono
11 work, work in which I had absolutely no involvement, for a
12 nonprofit organization that cared for old, infirmed, retired
13 racehorses. This nonprofit organization has no discernible
14 connection to the issues in this case and does not in any way
15 call into question my fairness or impartiality. The bad-faith
16 motion is frivolous and was clearly calculated to generate
17 diversionary press coverage, which it clearly already has.

18 Now, while I carefully considered each of defendants'
19 arguments, I need not respond to each of the confected claims
20 made in the motion. I will note, however, that the motion
21 contains multiple plainly false statements, which officers of
22 the Court should not have made in a public filing and which are
23 not entitled to be dignified with point-by-point commentary,
24 but, by way of example only:

25 I did not own the two horses from the 2006 to 2009

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1 races that defendants misleadingly referenced as my horses.

2 Another blatant falsehood: My former partner, alluded
3 to throughout the motion, is not on the board of the New York
4 Racing Association and has not been on the NYRA board for many
5 years, as he's performing public service for the State of New
6 York and, therefore, resigned from the NYRA board in 2015.

7 In all events, it's black-letter law that the nonlegal
8 activities of one of my former partners is in no way relevant
9 to the issues of whether I can fairly and impartially conduct
10 this case to conclusion.

11 Another example of falsehood in the motion: It is
12 patently false to suggest that I had a financial interest in
13 horses racing at Monmouth or Tampa Downs, since the very
14 regulations defendants themselves cite to in their motion make
15 it clear that the breeders' awards they rely on only apply to
16 races in New York.

17 Another of the clearly meritless arguments for recusal
18 is that for a period of time, that ended in 2015, I was a
19 member of a breeding organization, the New York Thoroughbred
20 Breeders.

21 Another, even more attenuated, even more frivolous,
22 argument is that my relationship with a person involved in
23 aspects of the thoroughbred industry is somehow disqualifying.
24 Under black-letter law, those affiliations are irrelevant and
25 obviously not the grounds for recusal.

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1 Every court to consider similar contentions has
2 summarily rejected them, and I would refer you to: *McNeil v.*
3 *Aguilos*, a 1995 case from the Southern District of New York;
4 *United States v. Nelson*, 2010, from the Eastern District of
5 New York; *Sevier v. Hickenlooper* from the District of Colorado
6 in 2018; *Sierra Club v. Simkins* from the Fourth Circuit 1988;
7 and *Armenian Assembly* from the D.C. Circuit, 2011.

8 No authority suggests that an attenuated or past
9 connection to a nonparty organization requires recusal, even
10 where issues arise on which the organization takes positions.
11 To my knowledge, no organization to which I have ever belonged
12 has taken a position on any issue in this case. I have been
13 presiding over this case for more than 14 months, during which
14 time I've held numerous hearings, ruled on motions, and managed
15 the case with a view towards moving it towards a reasonably
16 expeditious trial despite COVID restrictions, requests for a
17 protracted schedule, and several requests for adjournments. I
18 have an affirmative duty to keep this case and to move it
19 forward in the regular course, and I intend to do just that.

20 To that end, prior to receipt of the letter of last
21 Thursday advising that defendants were contemplating making a
22 motion for me to recuse, I was carefully reviewing the
23 voluminous submissions of the parties on the pending motions to
24 dismiss, including literally hundreds of pages of briefings,
25 affidavits, and documents submitted in connection with the

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1 motions by certain, but not all, defendants. Those motions are
2 all denied.

3 Next week I will be issuing a formal opinion setting
4 forth the bases for my decision to deny the motions to dismiss,
5 and after this conference concludes I'll file on the docket a
6 written order reflecting my ruling on the recusal motions.

7 Now, I'd like to turn to the status conference, which
8 is the reason we were scheduled to convene today.

9 Can I please have from the government an update on the
10 status of discovery?

11 MR. ADAMS: Yes, your Honor. Hi. This is Andrew
12 Adams, speaking for the government.

13 Your Honor, discovery has been largely complete. Most
14 recently, the government has been gathering documents obtained
15 in connection with another one of the cases involving the
16 horseracing industry, U.S. v. Robinson, which is before Judge
17 Oetken. In connection with gathering those documents, we
18 have -- as we have been doing throughout the proceeding, we are
19 cross-producing those to defendants in this case as well,
20 largely in an abundance of caution, but with some indication
21 that there is some overlap between the companies that were
22 producing drugs that are at the heart of the Robinson case and
23 certain of the defendants in this case.

24 So, recently and upcoming, we expect that we will be
25 making productions of largely grand jury subpoena returns and

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1 material from that case to the defendants. The volume on that
2 is not voluminous, and we're happy to talk about how that plays
3 into this case with defense counsel and give people some
4 guidance on who may be specifically impacted by this
5 production.

6 THE COURT: All right. Other than that, Mr. Adams, is
7 discovery complete? We're getting to the point where discovery
8 needs to be brought to a close. This case needs to move
9 towards trial.

10 MR. ADAMS: Agreed, your Honor. And discovery is --
11 what we had gathered and what we have gathered, we've produced.
12 These are things that we are continuing to receive as we
13 continue to investigate.

14 THE COURT: All right.

15 Ms. Greenwood, is there anything you want to put on
16 the record? I do have your last status report, which came in
17 on April 30th. You reported to me that there was a
18 supplemental production in April. I don't know the volume of
19 that. So, Ms. Greenwood?

20 MS. GREENWOOD: Yes, your Honor. For the April
21 production, the volume was just about eight gigabytes, and to
22 put that in context, we have in this case over eight terabytes
23 of data, so it was, in the scheme of things, a rather small
24 production.

25 I would like to note for the record that since the

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1 last conference, there have been eight productions of global
2 discovery, two of which were rather large and were actually
3 replacements for earlier productions of discovery that I think
4 were discussed at length at the last conference.

5 THE COURT: Right. I think you had raised with me
6 some issues with respect to that discovery, right?

7 MS. GREENWOOD: Yes, your Honor.

8 And I can report that there are no remaining technical
9 issues with any of the global discovery that my office has
10 received, and all productions have been made available to
11 defense counsel.

12 THE COURT: All right.

13 Do any defendants wish to put anything on the record
14 with respect to discovery?

15 All right. As I say, I will be issuing --

16 MS. GLAVIN: Your Honor, I believe Mr. Baum was
17 speaking. I think he had to go off mute.

18 This is Rita Glavin, for the record.

19 MR. BAUM: I apologize.

20 THE COURT: No problem. If this happens, maybe people
21 should raise their hand, too, because I can see that visually.
22 I don't see when your mouth is moving.

23 MR. BAUM: I forgot to --

24 THE COURT: Go ahead, Mr. Baum.

25 MR. BAUM: -- unmute following your question.

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1 THE COURT: No problem.

2 MR. BAUM: Your Honor, I've been asked to speak on
3 behalf of the defense in relation to the discovery and its
4 impact on the motion schedule that was previously set by the
5 Court.

6 THE COURT: Yes.

7 MR. BAUM: In the May 7th letter to the Court by the
8 government, which was based on discussions between the parties,
9 the government consented to an extension of time for the filing
10 of motions to August 27th. In that letter, they described the
11 reasons as trial conflicts -- for one, Ms. Glavin, as well as
12 one or two other defense attorneys -- and also the opportunity
13 to continue to review discovery. I can tell the Court that it
14 is important for the discovery to be completed before we file
15 our motions, particularly the motions directed to the wiretaps.
16 And there are numerous reasons for that.

17 A wiretap application must show that the government or
18 the agent has exhausted all other remedies other than wiretaps.
19 And unless we review the discovery that currently exists,
20 which, as Ms. Greenwood noted, is voluminous, and we are
21 struggling to complete it, we are not in a position to be able
22 to effectively address the suppression issue involving that.

23 The wiretaps also must demonstrate that government
24 investigative techniques -- other government investigative
25 techniques have failed. We can't address that unless we

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1 complete the discovery.

2 There are also statements in the wiretap applications
3 which we believe may not be accurate. We cannot address that
4 until we complete the discovery.

5 So, it's important, and I believe common in the
6 Southern District, for the Court to allow discovery to be
7 completed before the defense files motions, and in this
8 particular case relating to the wiretaps, I've provided the
9 Court with several reasons why it's important to complete the
10 discovery.

11 I will add, as Mr. Adams has told you, that there is
12 discovery that is going to be produced. In addition to the
13 Robinson case, which will be produced, it's my understanding
14 that there's material discovery from grand jury subpoenas which
15 will be produced.

16 So, these are factors which lead us to request an
17 extension of the time to file the wiretap motions, and we
18 respectfully ask your Honor's indulgence in allowing us to
19 complete our discovery.

20 I might add -- and I'm glad Ms. Greenwood is on the
21 line -- I might add that it's my understanding, based on
22 Ms. Greenwood's letter to the Court just two weeks ago, that,
23 in addition, Ms. Greenwood and her team are developing a --

24 THE COURT: Let me just interrupt you because
25 Ms. Greenwood asked that that letter be filed under seal. So

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1 I'm just going to remind you --

2 MR. BAUM: Yes.

3 THE COURT: -- to be careful that you are not
4 disclosing privileged communications that she had with
5 defendants.

6 MR. BAUM: I totally understand, and I appreciate your
7 bringing that to my attention, Judge.

8 The only thing I want to say is that Ms. Greenwood's
9 developing a tool for reviewing the call sheets and the
10 wiretaps. It would be an online database to be used for
11 documents and emails. And that tool has not been completed
12 yet, to my understanding, and she's working with the vendor to
13 complete that.

14 So, for all of these reasons, we ask you to allow us
15 to complete a review of the discovery that has currently been
16 provided and to complete discovery generally before we're asked
17 to file wiretap suppression motions, which would require our
18 attention to this discovery.

19 THE COURT: Anyone else wish to be heard?

20 All right. The Court -- go ahead, Mr. Adams.

21 MR. ADAMS: I'm sorry, your Honor. I was going to ask
22 if I could just respond to that.

23 Discovery that's going out -- that has gone out
24 recently and is going out is almost certainly not going to have
25 any impact on consideration of the wiretaps. Of course, I

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1 think it's been my experience that often the Court will say
2 we're going to set a motion deadline, and if there is discovery
3 from ongoing investigations that provides a new ground for a
4 motion after that deadline, then you can refile new motions.
5 But I don't expect that there's any real material impact on the
6 motions that could be considered based on what we're planning
7 to produce.

8 THE COURT: All right.

9 MR. BAUM: Your Honor, with all due respect to
10 Mr. Adams, he advised us that there's material discovery from
11 grand jury subpoenas, so he might not even be aware of the
12 things he receives pursuant to those subpoenas and how they may
13 impact on our filing of motions.

14 THE COURT: All right. I understand.

15 The Court does have the letter that I guess was
16 submitted by the government with a proposal asking me to modify
17 the schedule that we talked about at the last conference for
18 these phase two motions, which is the shorthand that we're
19 using to refer to motions to suppress. The proposed new
20 briefing schedule is way, way too extended, and would push a
21 trial in this case well into 2022, and that's just not
22 acceptable to the Court. I am willing to adjourn the schedule
23 briefly, but any scheduling that needs to be done -- first of
24 all, I do note that the government has represented that the
25 bulk of the materials in this case have been produced. I will

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1 extend the schedule slightly, and I will also say, in that
2 order, that if there is discovery material subsequently
3 produced that is properly the subject of a motion, I will
4 entertain that motion outside the schedule that I'm about to
5 set, but I am not going to enter a schedule that pushes
6 briefing so that briefing is not even completed until right
7 before Thanksgiving. That's just not acceptable.

8 So, phase two motions will be due on June 15th,
9 oppositions will be due August 2nd, and replies will be due
10 September 1st. And, as I say, if there is discovery produced
11 subsequently of which the defendants were not aware, which is
12 properly subject to a motion to dismiss, I will certainly
13 entertain that motion out of turn of this schedule while we are
14 moving forward with the other issues that we need to talk
15 about.

16 MS. GLAVIN: Your Honor, I think you may have meant
17 July 15th?

18 THE COURT: No. I meant June 15th.

19 MS. GLAVIN: The current schedule for phase two
20 motions, I believe, is that the defense was to file on
21 June 28th.

22 THE COURT: I thought it was May 24th.

23 MS. GLAVIN: No. We had asked for -- there was a
24 letter that we filed, that the Court memo-endorsed on March --

25 THE COURT: Your letter?

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1 MS. GLAVIN: Yes, your Honor.

2 -- asking for June 28th.

3 THE COURT: All right. I will make it July 15th in
4 light of that, and then the oppositions will have to be due --
5 let me just pull out a calendar.

6 I'm sorry, I'm still working off of the May 24th date.

7 August 19th for oppositions, and September 9th for any
8 reply.

9 As I say, if materials are produced -- I understand
10 your point, Mr. Baum, and it's well taken, but if the
11 government produces additional material, you can simply advise
12 the Court that that's come in and that you have a motion that
13 you'd like to make, and I will set a schedule in connection
14 with that. All right?

15 MR. BAUM: Thank you, your Honor.

16 THE COURT: Now, the next thing we should talk about
17 is the question of expert disclosure.

18 The government is proposing, apparently, that that
19 happen, disclosure of proposed experts, at the end of the
20 briefing schedule it was proposing, which was November. I've
21 just now moved that up to September 9th. As I understand it,
22 defense counsel want to talk about this at another conference,
23 which you'd like me to hold sometime in the fall. I certainly
24 will hold another conference in the fall, but I do not see why
25 disclosure of experts cannot proceed while you are reviewing

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1 whatever discovery you're reviewing and working on motions to
2 suppress. I'll hear from anyone who wishes to be heard.

3 Go ahead, Ms. Glavin.

4 MS. GLAVIN: Your Honor, with respect to expert
5 disclosure, I don't think that the -- correct me if I am wrong
6 on this, your Honor, I don't think the Court is aware of what
7 the government has made disclosures to us on experts.

8 THE COURT: I know they told me that they've told you
9 of two experts. That's all they've advised the Court.

10 MS. GLAVIN: With respect to one of the two experts --
11 and I would call this expert -- her name is Dr. Cole. With
12 respect to the expert reports we received from the government
13 in September, I think there were approximately --

14 THE COURT: I'm sorry, you have both reports and the
15 names?

16 MS. GLAVIN: Yes. There are two experts. I'm
17 forgetting the name of the second, but the first expert, which
18 I assume is the primary expert for the government, is a doctor
19 by the name of Dr. Cole. And there were approximately --
20 Mr. Adams can correct me if I am wrong -- there were
21 approximately seven or eight different scientific opinions that
22 were given in that disclosure. There was then a second
23 disclosure in February of this year that also has several
24 additional scientific opinions. One of the opinions deals with
25 a number of different substances. We began working with the

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1 consultant on this sometime after September, at least with
2 respect to (unintelligible). The new report that we received
3 in February from the government -- and I want to emphasize that
4 the reports are -- they take up somewhat of a fair amount of
5 time and may require different expertise, so we have -- I know
6 as defense lawyers, we've been discussing it as a group, and
7 part of the issue is, I think, for us is needing to discuss
8 with the government in terms of their own theories at trial
9 what -- so we can have a sense of what expert we want to use,
10 because I think there are three different trial groups, and it
11 may be that they're not --

12 THE COURT: Yes.

13 MS. GLAVIN: It may be that they're not going to use
14 one expert or this report for this trial, and that makes things
15 just sort of a little bit difficult on our end.

16 In addition -- and I do want to make this clear to the
17 Court -- the government has raised with us, and I know your
18 Honor's aware of this from our November conference, but there
19 is a superseding indictment possibility. Mr. Adams, we
20 discussed this with him, and he -- with respect to some groups
21 of defendants, he has said he does not think there would be new
22 charges, there could be with others. And while the
23 government's perspective may be that if they bring a
24 superseding indictment, it doesn't change anything, well, a
25 simple word change in the indictment, even if you don't add new

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1 charges, to us – and we are the Count Three or Four
2 defendants – a simple word change in the indictment can change
3 what our whole defense theory is and what we think about need
4 for experts or not.

5 THE COURT: I understand.

6 MS. GLAVIN: That's what's causing the issue on our
7 end. So it's not a desire by our end to try and put this off.
8 We just want to get it right, and we don't want to have to
9 expend money on our end for something we may change our mind on
10 and not need. That's what makes it hard.

11 THE COURT: I understand. I also appreciate full well
12 that experts, and even the consultants that you need to get you
13 to experts, are expensive.

14 On my list of things I wanted to talk about, in fact
15 the next thing, was to raise the subject of trial groupings.
16 Back before the November conference, at my request, the
17 government had submitted a letter in which it made suggestions
18 about breaking the defendants into three groups and proceeding,
19 in effect, in three separate trial groupings. I don't recall
20 that the defendants ever responded to that. Was that a joint
21 proposal, or do defendants wish to be heard on that? Not right
22 now, but I would set a deadline. Where does that discussion
23 stand about trial groupings?

24 MS. GLAVIN: Your Honor, I'm happy to address it.

25 THE COURT: Yes.

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1 MS. GLAVIN: I thought, and I may be under the
2 misimpression, that at our last conference, that we were
3 putting off the discussion on severance and groups to see how
4 things developed.

5 THE COURT: Right. That's true, but there were
6 discussions with the defendants -- with the government in the
7 meantime.

8 MS. GLAVIN: I can tell, from at least with respect to
9 my perspective on the Count Three and Four defendants in the
10 group, I don't have an objection to that group, but I don't
11 know if things will change with the government. And I also
12 don't know if things will change with the government if they
13 supersede and add an additional defendant.

14 THE COURT: All right. Fair enough.

15 Mr. Adams, let me ask you, because it's also on my
16 list of questions for you: What specifically is the
17 government's intention with respect to whether there's going to
18 be another superseding indictment? Will there be new
19 defendants? Will there be new charges? If there's going to be
20 a superseding indictment, when is it coming? Because the
21 defendants have a fair legitimate point that they cannot
22 realistically be expected to even comment on your proposed
23 trial groupings, much less retain experts and prepare the case
24 for trial, unless and until they know what the indictment looks
25 like.

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1 MR. ADAMS: Thank you, your Honor.

2 As we've discussed with the defendants, to the extent
3 that we seek to add additional charges against the people who
4 are in the case right now, those would be charges based on
5 likely a wire or mail fraud theory that focused squarely on the
6 same facts that are the subject of the discovery submitted to
7 date.

8 THE COURT: Excuse me one second, Mr. Adams. Whomever
9 is typing, please stop doing it and please mute your line.

10 Go ahead, Mr. Adams. I'm sorry.

11 MR. ADAMS: Thank you, your Honor.

12 That is to say, there is no expectation that filing of
13 a superseding indictment as to the people in this case today
14 would have any impact on what the discovery or the facts
15 underlying the case would be. There may be, as a result of the
16 superseder, if it comes, a motion to dismiss a new count, but
17 there will not suddenly be a new wiretap application that
18 becomes relevant or a new search warrant that becomes relevant.

19 With respect to new people who may or may not be
20 added, as I've said all along, the government continues to
21 investigate this case and to investigate other related cases.
22 There may well be other people who are charged; they may be
23 coconspirators in this case. The government would not expect
24 that somebody being added to the case today would be on the
25 same schedule as the people who have been in the case, but

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1 that, again, would have no impact on the defendants who are
2 currently in the case. We wouldn't be seeking to join for
3 trial a defendant who arrived in the case tomorrow, if that
4 were to happen.

5 It's all just speculative. It's certainly not our
6 intention to announce a superseder next week or next month.
7 And as we sit here today, I am not able to say that we are
8 certainly, or even likely, to add charges in this case. This
9 is all speculation, and it need not delay moving the case
10 forward.

11 THE COURT: All right. Mr. Adams, at some point, the
12 government needs to get real and stop speculating here. This
13 case is moving forward, and I'm certainly not going to hold
14 anything up for the government to get its act together and
15 decide what it wants to do.

16 Here is what I am going to order: I'm going to give
17 the parties 30 days to talk about -- and you should just assume
18 that the existing superseding indictment is the operative
19 charging document in this case. If the government tries to
20 alter that, we'll have to deal with it at that time. I would
21 like the parties to confer about the proposed trial groupings
22 that the government proposed in advance of the November
23 conference, and I would like you to confer about a schedule for
24 the disclosure by defendants of their experts, assuming the
25 existing indictment is the one on which we're moving forward.

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1 And I would like to get a report back from the parties in
2 30 days. Hopefully, it could be a joint report, but to the
3 extent there are disagreements, those should be laid out in the
4 letter.

5 So there's no misunderstanding, it is the Court's view
6 that at least one of these three trial groupings ought to be in
7 a position to proceed to trial during this calendar year. I
8 don't know, because I don't have a crystal ball, but I am
9 assuming that with all of the new CDC guidelines that are
10 coming out or lifting of in-place guidelines, that we may, at
11 some point, sooner rather than later, be moving back towards
12 normal courthouse operations and individual judges' scheduling
13 of their own trials. As you know, right now, I do not have
14 control over the ability to set a trial. Whether I set the
15 trial date or it's set through central scheduling, it is my
16 intention that the first of these trials will be requested for
17 a slot in the fourth quarter of this calendar year, with the
18 others to follow soon thereafter in 2022. I'm putting everyone
19 on notice of that right now. And I will look for a report from
20 you all with respect to trial grouping and disclosure of
21 experts in the next 30 days. We will include a date, concrete
22 date, in the order.

23 Is there any other matter that we should talk about?

24 MR. KREISS: Respectfully, your Honor, may I address
25 the Court?

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1 THE COURT: Who's speaking, please?

2 MR. KREISS: Jason Kreiss, I apologize, on behalf of
3 Mr. Navarro.

4 Respectfully, your Honor, would the Court permit the
5 defendants an opportunity to submit a letter based upon the
6 Court's addressing and the comments made by the Court in
7 reference to our letter of recusal, please?

8 THE COURT: No. You have my ruling. I don't know --
9 sir, you don't practice in New York, right?

10 MR. KREISS: Not regularly, your Honor, correct.

11 THE COURT: In New York, it's not our practice to file
12 letters commenting on an opinion or a ruling by the Court.
13 That's not the way we operate or the way the court system
14 operates.

15 So, as I said, 30 days from today, you should conclude
16 your meet-and-confer, and I will look for a report from the
17 parties on proposed trial groupings and disclosure of experts.

18 I suppose we should look at a date in the early fall
19 for a further conference, then, to talk about that. I will
20 include a date for a further conference sometime in early
21 September. I need to confer with my courtroom deputy about
22 calendaring, but we'll include that. If there are issues with
23 the date that we propose, the parties can confer, and then
24 we'll try to work with you to find a date that works.

25 MS. GLAVIN: Your Honor?

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1 THE COURT: Yes.

2 MS. GLAVIN: This is Ms. Glavin.

3 Before we conclude the conference, could some of the
4 defense lawyers just have a moment to confer offline just to
5 see if there's any other issues? There are a couple of things
6 I'd like to discuss, just before we conclude, with my
7 colleagues.

8 THE COURT: You can, but I don't honestly know how to
9 facilitate that on Team.

10 MS. GLAVIN: No, no, no, your Honor, if we go on
11 mute -- I can initiate a phone call.

12 THE COURT: Oh. I have no objection to that.

13 MS. GLAVIN: Can we take a ten-minute break or
14 five-minute break?

15 THE COURT: Why don't we reconvene at 12:10. I will
16 turn off my camera and mute my line, you can all talk, and I
17 will log back on at 12:10.

18 MS. GLAVIN: Thank you, your Honor.

19 (Recess)

20 THE COURT: This is Judge Vyskocil. We're back on the
21 record.

22 Is the court reporter with us?

23 (Pause)

24 THE COURT: All right, terrific. Thank you.

25 So, when you requested leave to consult, I said that I

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1 wanted a status or a letter from the parties roughly 30 days
2 out reacting to or telling me the proposal with respect to
3 trial grouping and a proposal for disclosure of defendants'
4 experts, and that we would have a further conference sometime
5 in September.

6 So, are there other matters that we should discuss?

7 All right. Mr. Adams, is there a further application
8 from the government under the Speedy Trial Act?

9 MR. ADAMS: There is, your Honor. In light of the
10 motions schedule that the Court has set, we would ask to
11 exclude time for purposes of considering those motions, and for
12 the Court to consider them as well, through September 9th,
13 which is the reply date.

14 THE COURT: All right. I'm going to set a further
15 conference, as I said, sometime in September. I would suggest
16 that just to leave me time to look at my calendar, we use
17 September 15th as a control date.

18 Is that acceptable to the government?

19 MR. ADAMS: It is, your Honor. And we would just ask
20 to extend the exclusion through September 15th for that
21 purpose.

22 THE COURT: That's what I'm suggesting.

23 MR. ADAMS: Yes. Thank you, your Honor.

24 THE COURT: All right. And do you want to make a
25 record of the reasons justifying exclusion of time?

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1 MR. ADAMS: Yes. The interests of justice are
2 furthered, to give the defendants, as they've requested,
3 additional time to review discovery, contemplate and file
4 motions, and for the government to respond to those, and for
5 the Court to begin reviewing those motions as well.

6 THE COURT: Are there any objections from any
7 defendant?

8 All right. Hearing none, I will exclude time between
9 today and September 15th. I do find that the ends of justice
10 served by excluding the time outweigh the interests of the
11 defendants and the public in a speedy trial. Specifically, the
12 exclusion of time will allow the defendants to complete their
13 review of discovery, to consider and prepare and file any
14 further motions that they wish to make, specifically the
15 second-round motions to suppress that we've been talking about,
16 it will allow for the government to file oppositions,
17 defendants to file any replies, and for the Court to consider
18 those motions.

19 Is there anything --

20 MR. FELDMAN: Your Honor.

21 THE COURT: -- further for the record?

22 MR. FELDMAN: Your Honor -- I'm sorry, your Honor.
23 It's Andrew Feldman, on behalf of Dr. Fishman.

24 To the extent that there are not motions pending
25 during the period of exclusion, which your Honor is talking

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1 about, which would be automatically tolled under the Speedy
2 Trial Act, Dr. Fishman is objecting to the exclusion of time
3 under the Speedy Trial Act and is not waiving his rights to a
4 speedy trial.

5 THE COURT: All right. Understood. But the objection
6 is overruled in light of the request from the defendants
7 themselves for more time to consider whether to file motions.

8 Anyone else wish to be heard on any issue?

9 All right. Then I thank our court reporter,
10 Mr. Walker, very much for being with us and for your patience.
11 I wish everyone a good rest of the day, and please, everyone,
12 stay safe and healthy.

13 Enjoy the nice weather.

14 COUNSEL: Thank you, Judge.

15 * * *